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8 Attorneys for Complainant

9  
10 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2004-30

13 RICHARD J. MUSCIO  
307 Lomas Santa Fe Drive  
14 Solana Beach, CA 92075

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Certified Public Accountant Certificate  
No. 40436

16  
17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Carol Sigmann (Complainant) is the Executive Officer of the California  
22 Board of Accountancy. She brought this action solely in her official capacity and is represented  
23 in this matter by Bill Lockyer, Attorney General of the State of California, by Rita M. Lane,  
24 Deputy Attorney General.

25 2. RICHARD J. MUSCIO (Respondent) is representing himself in this  
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about June 8, 1984, the California Board of Accountancy issued  
28 Certified Public Accountant Certificate No. 40436 to RICHARD J. MUSCIO (Respondent). The

1 Accountant license expired on June 30, 2004, and has not been renewed.

2 JURISDICTION

3 4. Accusation No. AC-2004-30 was filed before the California Board of  
4 Accountancy (Board), Department of Consumer Affairs, and is currently pending against  
5 Respondent. The Accusation and all other statutorily required documents were properly served  
6 on Respondent on January 19, 2005. Respondent timely filed his Notice of Defense contesting  
7 the Accusation. A copy of Accusation No. AC-2004-30 is attached as Exhibit A and  
8 incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations  
11 in Accusation No. AC-2004-30. Respondent has also carefully read and understands the effects  
12 of this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the  
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
15 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
16 the right to present evidence and to testify on his own behalf; the right to the issuance of  
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
18 reconsideration and court review of an adverse decision; and all other rights accorded by the  
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in  
24 Accusation No. AC-2004-30.

25 9. Respondent agrees that his Certified Public Accountant license is subject  
26 to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the  
27 Disciplinary Order below.

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1 or Public Accountant is required as described in Business and Professions Code, Division 3,  
2 Chapter 1, Section 5051.

3           2.       **Obey All Laws.** Respondent shall obey all federal, California, other  
4 states' and local laws, including those rules relating to the practice of public accountancy in  
5 California.

6           3.       **Submit Written Reports.** Respondent shall submit, within ten (10) days  
7 of completion of the quarter, written reports to the Board on a form obtained from the Board.  
8 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,  
9 and verification of actions as are required. These declarations shall contain statements relative to  
10 Respondent's compliance with all the terms and conditions of probation. Respondent shall  
11 immediately execute all release of information forms as may be required by the Board or its  
12 representatives.

13           4.       **Personal Appearances.** Respondent shall, during the period of probation,  
14 appear in person at interviews/meetings as directed by the Board or its designated  
15 representatives, provided such notification is accomplished in a timely manner.

16           5.       **Comply With Probation.** Respondent shall fully comply with the terms  
17 and conditions of the probation imposed by the Board and shall cooperate fully with  
18 representatives of the Board of Accountancy in its monitoring and investigation of the  
19 Respondent's compliance with probation terms and conditions.

20           6.       **Practice Investigation.** Respondent shall be subject to, and shall permit,  
21 practice investigation of the Respondent's professional practice. Such a practice investigation  
22 shall be conducted by representatives of the Board, provided notification of such review is  
23 accomplished in a timely manner.

24           7.       **Comply With Citations.** Respondent shall comply with all final orders  
25 resulting from citations issued by the Board of Accountancy.

26           8.       **Tolling of Probation For Out-of-State Residence/Practice.** In the event  
27 Respondent should leave California to reside or practice outside this state, Respondent must  
28 notify the Board in writing of the dates of departure and return. Periods of non-California

residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

9. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.


10. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

11. **Cost Reimbursement.** Respondent shall reimburse the Board \$3,300.00 for its investigation and prosecution costs. The payment shall be made within 60 days of the date the Board's decision is final.

## ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: Febr 11, 2005

  
RICHARD J. MUSCIO  
Respondent

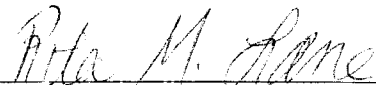
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: Feb. 16, 2005.

BILL LOCKYER, Attorney General  
of the State of California

  
\_\_\_\_\_  
RITA M. LANE  
Deputy Attorney General  
Attorneys for Complainant

**Exhibit A**  
**Accusation No. AC-2004-30**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 RITA M. LANE, State Bar No. 171352  
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3 California Department of Justice  
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10 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. AC-2004-30

14 RICHARD J. MUSCIO  
307 Lomas Santa Fe Drive  
15 Solana Beach, CA 92075

**A C C U S A T I O N**

16 Certified Public Accountant  
Certificate No. 40436

17 Respondent.  
18

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Carol Sigmann (Complainant) brings this Accusation solely in her official  
23 capacity as the Executive Officer of the California Board of Accountancy, Department of  
24 Consumer Affairs.

25 2. On or about June 8, 1984, the California Board of Accountancy issued  
26 Certified Public Accountant Certificate Number 40436 to RICHARD J. MUSCIO (Respondent).  
27 The Certified Public Accountant license expired on June 30, 2004, and has not been renewed.

28 ///



JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

. . .

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

. . .

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

5. Section 5106 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made, suspending the imposition of sentence, irrespective of a subsequent order under the

1 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of  
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the  
3 accusation, information or indictment.

4           6.       Section 5107, subdivision (a), states, in pertinent part:

5           The executive officer of the board may request the administrative law judge, as  
6 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or  
7 certificate found to have committed a violation or violations of this chapter to pay to the board all  
8 reasonable costs of investigation and prosecution of the case, including, but not limited to,  
9 attorneys' fees.

10           7.       Section 5109 of the Code states:

11           The expiration, cancellation, forfeiture, or suspension of a license, practice,  
12 privilege, or other authority to practice public accountancy by operation of law or by order or  
13 decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall  
14 not deprive the board of jurisdiction to commence or proceed with any investigation of or action  
15 or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the  
16 license.

17           8.       Section 490 of the Code states:

18           A board may suspend or revoke a license on the ground that the licensee has been  
19 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
20 of the business or profession for which the license was issued. A conviction within the meaning  
21 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
22 contendere. Any action which a board is permitted to take following the establishment of a  
23 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
24 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
25 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
26 Penal Code.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Crime)

3 9. Respondent has subjected his license to disciplinary action for  
4 unprofessional conduct under Code sections 5100(a) and 490 in that he was convicted of a crime.  
5 The circumstances are as follows:

6 a. On May 5, 2003, Respondent pled guilty to violating 18 U.S.C.  
7 section 371, Conspiracy to Defraud the United States, a felony, in the criminal proceeding  
8 entitled *United States of America v. Richard J. Muscio*, in the United States District  
9 Court, Southern District of California, Case Number 03CR0277-L. On July 21, 2003,  
10 Respondent was sentenced to three years of probation; ordered to pay an assessment of  
11 \$100 and ordered to pay a fine of \$10,000.

12 b. The circumstances of the crime are that Respondent was a Certified  
13 Public Accountant and partner at the accounting firm of Carter, Polito and Muscio located  
14 in Vista, California. Respondent's client A.M.P. was an independent distributor for  
15 Starlight International, Inc. On or about November 30, 1993, the Internal Revenue  
16 Service assessed A.M.P. \$29,320.69 in taxes, penalties and interest for the years 1987,  
17 1989, 1990 and 1991. On or about October 30, 1995, Respondent filed or caused to be  
18 filed, A.M.P.'s 1993 and 1994 individual income tax returns (IRS Form 1040), reporting  
19 that taxes were due and owing. No payment was submitted with these returns. From on  
20 or about July 1995 and continuing up to and including April 1997, Respondent knowingly  
21 conspired to defraud the United States in that he caused to be filed in connection with an  
22 Offer-In-Compromise, four false Collection Information Statements, IRS Forms 433A  
23 and 433B for A.M.P. The Collection Information Statements were false in that said  
24 statements did not reflect A.M.P.'s true and correct income and assets.

25 SECOND CAUSE FOR DISCIPLINE

26 (Conviction of a Crime Substantially Related to Accountancy Work)

27 10. Respondent has subjected his license to disciplinary action for  
28 unprofessional conduct under Code section 490 in that he was convicted of a crime substantially

1 related to accountancy work. Respondent's plea of guilty to the violation of 18 U.S.C. section  
2 371 is substantially related to the qualifications, functions or duties of a Certified Public  
3 Accountant, as the violation occurred while providing tax services to a client, as more  
4 specifically set forth in paragraph 9 above, which is incorporated herein as though fully set forth.

5 THIRD CAUSE FOR DISCIPLINE

6 (Dishonesty)

7 11. Respondent has subjected his license to disciplinary action for  
8 unprofessional conduct under Code section 5100(c) in that he engaged in acts of dishonesty when  
9 he conspired to defraud the United States and filed false tax documents for his client, A.M.P.  
10 The circumstances are set forth in paragraph 9 above, which is incorporated herein as though  
11 fully set forth.

12 FOURTH CAUSE FOR DISCIPLINE

13 (The Knowing Preparation of False Financial Statements, Reports or Information)

14 12. Respondent has subjected his license to disciplinary action for  
15 unprofessional conduct under Code section 5100(j) in the knowing preparation, publication, or  
16 dissemination of false, fraudulent, or materially misleading financial statements, reports or  
17 information. The circumstances are set forth in paragraph 9 above, which is incorporated herein  
18 as though fully set forth.

19 PRAYER

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
21 alleged and that following the hearing, the California Board of Accountancy issue a decision:

22 1. Revoking, suspending or otherwise imposing discipline upon Certified  
23 Public Accountant Certificate Number 40436 issued to RICHARD J. MUSCIO;

24 2. Ordering RICHARD J. MUSCIO to pay the California Board of  
25 Accountancy the reasonable costs of the investigation and enforcement of this case pursuant to  
26 Business and Professions Code section 5107; and

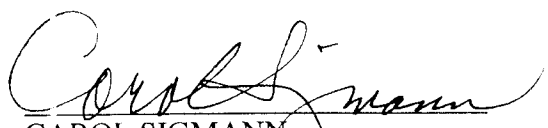
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3. Taking such other and further action as deemed necessary and proper.

DATED: January 13, 2005



CAROL SIGMANN  
Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
Complainant

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MUSCIO Accusation new\_wpd.DEFANGED-2

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2004-30

RICHARD J. MUSCIO  
307 Lomas Santa Fe Drive  
Solana Beach, CA 92075

Certified Public Accountant No. 40436


Respondent.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 22, 2005.

It is so ORDERED March 23, 2005.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS